

JAN 22 2009

Board of Vocational Nursing
and Psychiatric Technicians

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2006-2250

EUGENE HAROLD BARNETT
11303 Wilshire Blvd., #116
Los Angeles, CA 90073
Vocational Nursing License No. 109875

ACCUSATION

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs (Board).

2. On or about August 20, 1982, the Board issued Vocational Nurse License No. VN 109875 to Eugene Harold Barnett (Respondent.) The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and expired on August 31, 2008.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All Section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2875 provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118, subdivision (b), provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under Section 2892.1, the Board may renew an expired license at any time within four years after the expiration.

6. Section 490 provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

7. Section 2878 states, in pertinent part:

"The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)) for any of the following:

"(a) Unprofessional conduct,

. . . .

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter.

. . . .

"(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction. . . ."

"(k) The commission of any act punishable as a sexually related crime, if that act is substantially related to the duties and functions of the licensee.

8. Section 2878.6 states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a licensed

1 vocational nurse is deemed to be a conviction within the meaning of this article. The board may
2 order the license suspended or revoked, or may decline to issue a license, when the time for
3 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order
4 granting probation is made suspending the imposition of sentence, irrespective of a subsequent
5 order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw
6 his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
7 dismissing the accusation, information or indictment.”

8 9. California Code of Regulations, title 16, section 2521 states:

9 “For the purposes of denial, suspension, or revocation of a license pursuant to
10 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or
11 act shall be considered to be substantially related to the qualifications, functions or duties of a
12 licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a
13 licensed vocational nurse to perform the functions authorized by his license in a manner
14 consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be
15 limited to those involving the following:

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17 “(c) Violating or attempting to violate, directly or indirectly, or assisting in or
18 abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2
19 of the Business and Professions Code.

20 COST RECOVERY

21 10. Section 125.3 provides, in pertinent part, that the Board may request the
22 administrative law judge to direct a licensee found to have committed a violation or violations
23 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case.

25 FIRST CAUSE FOR DISCIPLINE

26 (Conviction of Substantially Related Crime)

27 11. Respondent is subject to disciplinary action under sections 490 and 2878,
28 subdivision (f), as defined in California Code of Regulations, title 16, section 2521, in that

1 Respondent was convicted of a crime substantially related to the qualifications, functions or
2 duties of a licensed vocational nurse as follows: On April 2, 2008, Respondent was convicted
3 following his plea of nolo contendere to one felony count of violating Penal Code section
4 288(c)(2) (Lewd Act on Dependent Adult) in the Superior Court of California (County of Los
5 Angeles) in a case entitled *The People of the State of California v. Eugene Harold Barnett*, Case
6 No. BA323585. A second charge of violating Penal Code section 288(b)(2) (Lewd Act on
7 Dependent Adult) was dismissed pursuant to a plea bargain.

8 The factual circumstances underlying the conviction are as follows: On May 31, 2007, a
9 certified nurse assistant (CNA) working at Kennedy Care Center heard moaning sounds which
10 she followed to room #2A where she observed a cubicle curtain pulled around the bed of M.B, an
11 eighty-four year old patient with dementia ("Patient M.B.") The CNA looked around the curtain
12 and observed Respondent laying on top of Patient M.B. and making a thrusting motion. The
13 CNA exited the room without announcing her presence and went to her RN Supervisor.
14 Together, they returned to room #2A where they observed the patient's right side bed rail down,
15 a blanket pulled back and her diaper open. After notifying the police, Respondent was taken into
16 custody by Los Angeles Police officers.

17 Pursuant to the conviction, Respondent was sentenced to two years in state prison and
18 three years probation, which included a condition that he register as a sex offender.

19 SECOND CAUSE FOR DISCIPLINE

20 (Conviction of Sexual Related Crime)

21 12. Respondent is subject to disciplinary action under section 2878,
22 subdivision (k) in that Respondent committed an act punishable as a sex related crime as further
23 described in paragraph no. 11.

24 PRAYER

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein
26 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
27 Technicians issue a decision:

28 1. Revoking or suspending Vocational Nurse License No. VN 109875;

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2 2. Ordering Respondent to pay the Board the reasonable costs of the
3 investigation and enforcement of this case, pursuant to Business and Professions Code section
4 125.3;

5 3. Taking such other and further action as deemed necessary and proper.

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7 DATED: January 22, 2009

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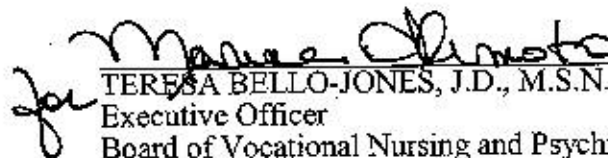
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TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California

Complainant